

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MERIX PHARMACEUTICAL CORPORATION,

Plaintiffs

vs.

EMS ACQUISITION CORPORATION,

Defendants.

No. 09 C 5871

Judge David H. Coar

**DEFENDANT, EMS ACQUISITION CORPORATION'S, MOTION TO DISMISS
PLAINTIFF, MERIX PHARMACEUTICAL CORPORATION'S COMPLAINT**

Pursuant to Rules 12(b)(2) and 12(b)(3) of the Federal Rules of Civil Procedure, Defendant, EMS Acquisition Corporation ("EMS" or "Defendant"), hereby moves this Honorable Court to dismiss the Complaint with prejudice for lack of personal jurisdiction and/or because venue in this District is improper. As explained in the accompanying Memorandum of Law, which is incorporated herein in its entirety, EMS does not have sufficient contacts within the State of Illinois, or any other contacts that would subject it to jurisdiction or venue in this District. In the alternative, if this action is not dismissed, it should be transferred to the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1404(a).

WHEREFORE, Defendant respectfully requests that this Honorable Court grant its Motion to Dismiss Plaintiff's Complaint with prejudice, or to transfer venue, and grant such further relief as may be deemed appropriate.

DATED: November 6, 2009

Respectfully submitted,

EMS ACQUISITION CORPORATION

By: s/ Suzanne L. Sias
One of Their Attorneys

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